TASEK NAIMON

v.

HENG SIEW NGOH

HIGH COURT MALAYA, JOHOR BAHRU
MOHD. YUSOF ABDUL RASHID J
[CIVIL SUIT NO. 196 OF 1980]
5 SEPTEMBER 1981

CONTRACT: *Limitation Ordinance 1953 - Specific performance - Sale agreement - Claim of statute bar and non est factum - Dismissal of application to strike out the writ and the statement of claim - Appeal. Statute bar - When cause of action accrued - Rules of the High Court 1980, O. 18 r. 19(1).*

By a sale agreement the defendant had agreed to sell a piece of land to the plaintiff for which a deposit was paid and acknowledged. 13 years later the plaintiff wanted the defendant to fulfill her part to the obligation. The defendant denied the sale agreement. The plaintiff then claimed for specific performance.

The defendant admitted executing the sale agreement but averred that she had executed it in ignorance and was induced by the plaintiff to do so. Thus, the defendant pleaded on *non est factum*. The defendant also admitted that the signature appearing therein was hers and that she was the person described in the sale agreement. When the defendant pleaded on Statute of Limitation the question arose as to when the cause of action accrued.

Held:

[1] The cause of action accrued when the defendant refused to transfer and denied the sale agreement and not from the date of sale agreement.

[2] As to the defence of *non est factum*, the defendant had admitted that she was the one who signed the agreement in the presence of a witnes

[3] That to set aside a writ and statement of claim it must be manifestly clear that the action was frivolous, vexatious, unmaintainable or an abuse of the process of the Court.

The Court was satisfied that the plaintiff had a contentious cause of action.

[Appeal was dismissed. No cost was awarded.]

Legislation referred to:
Rules of the High Court 1980, O. 18 r. 19(1)

For the plaintiff - S.S. Gill
For the defendant - P.C. Cheah

(Digest Form Only)

Also found at [1982] CLJ 79